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MAY 6 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of the Cable Television )  
Consumer Protection and Competition Act )  
of 1992 )MM Docket No. 92-259

Broadcast Signal Carriage Issues

**SUPPLEMENT TO PETITION FOR EMERGENCY RECONSIDERATION AND  
REQUEST FOR MODIFICATION OF RULES OF YANKEE MICROWAVE, INC.**

On May 3, 1993, Yankee Microwave, Inc. ("Yankee"), by its attorneys, filed a "Petition For Emergency Reconsideration And Request For Modification Of Rules" (hereinafter "Petition For Reconsideration") in the above-referenced proceeding.<sup>1</sup> Since that date, additional facts have come to light which bear consideration in connection with Yankee's Petition For Reconsideration.

Yankee challenged one aspect of the Commission's retransmission consent rules -- specifically the so-called "superstation exemption" which exempts from retransmission consent superstation signals obtained from a satellite carrier, but not from other distributors such as microwave carriers or cable TV-owned CARS systems.<sup>2</sup> As a result of the language of this provision, cable systems that receive superstation programming from Yankee's small microwave network are required to obtain retransmission consent, while those systems that switch to

<sup>1</sup> On May 3, 1993, Yankee also filed a "Request For Stay" of the "superstation exemption" to the Commission's retransmission consent rules. The National Cable Television Association has also requested a stay of the retransmission consent rules. See Petition Of National Cable Television Association For A Stay Pending Reconsideration Or, Alternatively, Pending Review, MM Docket No. 92-259, filed May 3, 1993.

<sup>2</sup> See 47 C.F.R. § 76.64(b)(2).

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satellite delivery of the very same superstations are exempt from retransmission consent requirements. Not surprisingly, the discriminatory "superstation exemption" has already caused several of Yankee's cable system customers to drop microwave delivery of superstations in favor of satellite delivery to avoid the necessity of negotiating for retransmission consent and possibly paying significant fees.

It has just come to Yankee's attention that a satellite carrier providing service to the New England region served by Yankee's microwave network is informing cable systems that Yankee is unlikely to receive retransmission consent from one of the superstations Yankee carries -- WSBK-TV, Channel 38, Boston, Massachusetts. Obviously, this satellite carrier is hoping to take advantage of the unfair preferential treatment accorded to satellite carriers by the Commission's rules and convince cable systems to drop Yankee in favor of satellite service. This is precisely the type of anti-competitive activity Congress attempted to forestall in the video distribution market by enacting The Cable Television Consumer Protection and Competition Act of 1992 (the "Act"). Yankee has already attempted on several occasions to contact WSBK-TV to discuss that station's retransmission consent policy, but thus far has been unable to get WSBK-TV to agree to a meeting. The satellite carrier in question has already apparently met with WSBK-TV.

These tactics on the part of the satellite carrier further underscore the necessity of immediate action on the part of the

Commission to modify the discriminatory language of the "superstation exemption." If the Commission fails to act swiftly to stay the effective date of the "superstation exemption" and modify the exemption to treat satellite and microwave carriers equally, it will ensure the demise of the remaining microwave carriers which compete with satellite. These small microwave carriers, such as Yankee, provide less expensive service than satellite, and often a better quality signal due to terrain obstructions which can interfere with the satellite footprint.

As discussed in Yankee's Petition For Reconsideration, there is simply no rational grounds for the FCC to prefer satellite delivery of superstation signals over microwave. The legislative history of the Act makes clear Congress intended to exempt from retransmission consent all superstation signals which qualified as superstations as of May 1, 1991 in order to protect established relationships. There is no evidence whatsoever in the legislative history of an intent to punish microwave carriers and eliminate competition for satellite. Whatever the genesis of the language of the "superstation exemption," that rule must be stayed and the language of the exemption modified to permit microwave carriers to

continue to compete with satellite to provide less expensive and better quality service to cable systems and their subscribers.

Respectfully submitted,

YANKEE MICROWAVE, INC.

By: 

John D. Pellegrin

By: 

A. Kimberly Matthews

Its Attorneys

John D. Pellegrin, Chtd.  
1140 Connecticut Avenue, N.W.  
Suite 606  
Washington, D.C. 20036  
(202) 293-3831

Date: May 6, 1993